IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1369 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ORIENTAL INSURANCE CO LTD

Versus

SHARDABEN K PARMAR

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Appearance:

MR RR MARSHALL for Petitioner

MR AV PRAJAPATI for Respondent No. 1

NOTICE SERVED for Respondent No. 7

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/01/2001

ORAL JUDGEMENT

This is an appeal under Section 173 of the Motor Vehicles Act, 1988, by the Oriental Insurance Company against the judgment and award dated 20.2.1996 recorded by the learned Motor Accident Claims Tribunal (Aux.),

(for short, 'the tribunal') in Motor Accident Claims Petition No.16/91, whereby the learned Tribunal was pleased to award compensation of Rs.92,000/- with proportionate cost and interest at 12% per annum in favour of the respondents No. 1 to 6, herein and against the appellant as well as respondent no.7. The facts of the case of the contesting respondents may be briefly stated as follows:

2. Deceased Kalubhai Dolabhai was passing on the road at about 2.30 p.m. on 11.1.1990. According to the case of the contesting respondents, the deceased was hit by a motor truck bearing registration No.GQG 7124, on account of which the deceased Kalubhai sustained injuries and died on account of the injuries sustained by him as aforesaid. The contesting respondent contended that the deceased sustained injuries and ultimately succumbed to death on account of rash and negligent driving on the part of the driver of the said vehicle. Therefore, the contesting respondents claimed that they were entitled to compensation from the driver of the said vehicle. They further claimed that the owner of the vehicle is liable to pay the compensation. They further contended that the vehicle involved in the accident was insured with the present appellant, and therefore, the appellant was under contractual and statutory obligation to indemnify the owner. That thereby, all the opponents in that claim petition were responsible and liable to compensate the claimants i.e. respondents no.1 to 6 herein. The claim was resisted by the present appellant mainly on the ground that the vehicle involved in the accident was not insured with the appellant and that a wrong vehicle has been substituted for the real one. Therefore, it was contended before the tribunal below that the appellant was not responsible or liable to compensate the contesting respondents. The appellant, therefore, prayed before the tribunal that the petition be dismissed against the respondents. The learned tribunal, therefore, observed that the vehicle involved in the accident was insured with the present appellant.

3. The appeal was admitted. Mr A V Prajapati, learned Advocate appears in response to the notice of admission on behalf of respondents no.1 to 6. I have heard M/s. R R Marshall and A V Prajapati, learned Advocates for the respective parties and have perused the papers. In fact, learned Advocates for the respective parties have drawn my attention to the records available in this appeal. Even the records and proceedings of the criminal case No.152/92 were called for from the learned Metropolitan Magistrate, court no.19 for perusal and the learned Advocates for the parties have taken me through

the relevant documents of the said criminal case also.

4. It has been mainly contended by Mr R R Marshall, learned Advocate for the appellant that the tribunal has committed serious error in holding that the truck was involved in the accident. It is also his argument that it was initially the case that a Matador was involved in the accident, and not the truck. That the truck has been substituted for the Matador at a later stage and therefore, the entire case put forwarded at the beginning has been altered subsequently. That therefore, the evidence in support of such a case is not reliable and consequently the tribunal should have dismissed the claim petition of the contesting respondents.

5. One thing is certain that when the FIR was lodged on 11.1.1990 by one Devilal Joshi, he had described himself as eye witness and he had shown that a Matador had been involved in the accident. There cannot be any dispute about the same. However, it appears that he, subsequently made his satement on the next day i.e. on 12.1.1990 and stated that it was a motor truck and not a Matador which was involved in the accident. The FIR is a public document and it seems to have been relied upon by the tribunal even without examining the informant Devilall Joshi. However, the subsequent statement would not be admissible and it cannot be gone into. The fact therefore, remains that a Matador and not a truck has been shown to have been involved in the FIR. At the same time, it is also to be seen that on the basis of the said FIR, which was lodged on the date of the accident itself, a police investigation was gone into and after a thorough investigation, the driver was arrested, charge sheet was filed against the said driver, which resulted in criminal case No.152/92 which was filed before the Metropolitan Magistrate. It was originally registered as criminal case no.740/90. The above said facts clearly suggested that the Investigating Officer had gone into the investigation and after completing a thorough investigation, the Investigating Police Officer had filed charge-sheet against the driver of the said vehicle. Here, it is to be seen that the charge sheet was filed against the driver of the truck, which is shown to have been involved in the present accident. This shows that there was some mis-description on the part of the informant in showing the involvement of Matador while lodging FIR on 11.1.1990. Therefore, siimply because the FIR shows involvement of Matador and not the truck, it cannot be said that the truck was not involved at all in the accident. It cannot be said that the truck was wrongly and falsely substituted for the Matador which had

in fact, been involved in the accident. I do not find any reason for substitution of one vehicle for the other. No such reason has been explained or assigned for the said purpose.

6. Another argument of Mr Marshall, learned Advocate for the appellant, is that the present appellant has examined one Rajendrakumar Shah as witness, who had definitely deposed before the tribunal that the truck in question had not been involved in the said accident. He has also deposed before the tribunal that he was with the truck all throughout on 11.1.1990.

7. There is no dispute that the witness Rajendrakumar Shah has desposed accordingly. At the same time, it is to be seen that this witness is an employee of the proprietor of the truck and, therefore, he may have come forward to support the case of the owner of the truck with a view to save the skin of the driver and owner of the said vehicle. He is not a totally disinterested person. Again, it has been argued that the truck has been substituted for the Matador after filing the FIR. This has been dealt with as aforesaid and as a result of detailed and thorough investigation by the police investigating agency, the said agency had been able to find out the correct position. Therefore, the charge sheet was accordingly filed against the driver of the said truck. It is to be seen that there is absolutely no dispute that the charge sheet was filed agaist one Ramzan Khan. There is no dispute that he was the driver of the truck. Even the witness Rajendrasingh Soni has not disputed this fact.

8. It has thereafter been contended by Mr R R Marshall that one Rambhai was examined as eye witness by the contesting respondent and the said witness has during cross-examination, deposed that he has not seen the accident that he had reached there after the accident. This would mean that he was not an eye witness and, therefore, he could not give any account as to how the accident took place. Let us accept the argument of Mr R R Marshall with respect to the reliability of the said witness.

9. Then there is evidence of Natubhai Zala, who has posed himself as eye witness. He had also given version in support of the respondent to the effect that the said truck was involved in the accident. There is no reason to disbelieve the evidence of Natubhai Zala. It appears that Natubhai also is a witness to the panchnama drawn by the police investigating officer with respect to the

place of accident. The panchnama is dated 11.1.1990. The police papers do not show that the statement of this witness was recorded by the police investigating officer. At the same time, his presence at the spot when the panchnama was drawn was established by producing the said panchnama. Any way, Natubhai has positively deposed before the tribunal about the involvement of the above truck in the said accident. This witness is shown to be a disinterested witness. There is no reason for this witness to wrongly or falsely support the case of the contesting respondent and to falsely involve the said truck, the truck driver, owner and the Insurance Company. Therefore, the learned tribunal cannot be said to have committed error in relying when the evidence of this witness.

9. The learned tribunal has also observed that there are some contradictions in the oral testimony of this witness but when the evidence is required to be given after some lapse of time, there would be some loss of memory and, therefore, there would be some contradiction from the original version. There is nothing on record to show that there are major contradictions which would go to show that the deposition of the witness is not reliable. Therefore, at least there was evidence before the tribunal in order to hold that the truck in question was involved in the accident. It, therefore, cannot be said that the tribunal has acted blindly without any evidence on record. It also cannot be said that the trbunal has committed any error in relying upon the evidence of the said witness. Once the evidence of the said witness is not found to be unreasonable or unacceptable, then, in that event, there would be no reason for not relying upon the said witness. Once the said witness is found to be trust-worthy and reliable, then it has to be held that there was material before the tribunal to hold that the aforesaid truck was involved in the accident. Once the truck is shown to have been involved in the accident, then there is no dispute that the truck was insured with the present appellant and the contract of the appellant was in existence on the date of the accident. Secondly, as an insurer, the appellant was under statutory and contractual obligation to indemnify the owner. In other words, the appellant was statutorily and factually responsible and liable to answer the claim of the contesting respondents. In other words, the learned tribunal has not committed any error in passing the judgment and award against the present appellant also. Once the said fact is accepted, then the rest of the things will not be required to be touched because this is an appeal by the Insurance Company on the

aforesaid limited aspect about involvement of the truck in the accident.

10. In the result, I find that the judgment and award of the tribunal are not illegal or erroneous and hence cannot be set aside. There is no merit in this appeal and it deserves to be dismissed. Accordingly, it is dismissed. The judgment and award of the tribunal are confirmed. There shall be no order as to costs.

Learned Advocate for the contesting respondents no.1 to 6, at this stage, has drawn my attention to an order dated 6.8.1987 passed by this court directing that 75% of the amount be deposited in Fixed Deposit in the name of the Registrar of the City Civil Court. In view of the disposal of this appeal, it is directed that the interest falling due on the said FDR, shall be paid to the contesting respondents 1 to 6 hereinabove. On maturity of the FDR, it will be open for the respondents No. 1 to 6 to make appropriate application for disbursement of the amount before the concerned tribunal and the concerned tribunal will dispose of the said application according to law. Liberty to apply in case of difficulty. Direct Service is permitted.

9.1.2001 [D P Buch, J.]
msp